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**IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

In re

SIMON TRANSPORTATION SERVICES
INC., DICK SIMON TRUCKING, INC.
and SIMON TERMINAL, LLC,

Debtors.

Bankruptcy No. 02-22906 GEC
[Chapter 11]

[JOINTLY ADMINISTERED]

**DEBTORS' RESPONSE TO FREIGHTLINER'S
EX PARTE MOTION FOR ORDER RESTRICTING DISCOVERY AND
FOR SCHEDULING CONFERENCE**

COME NOW the Debtors and respond to Freightliner's Ex Parte Motion for Order Restricting Discovery and for Scheduling Conference (the "Motion") as follows:

1. Debtors did not oppose a bifurcation of the hearings on June 4, 2002 at the status conference, premised on Freightliner keeping its agreement to timely provide witnesses on the notice issues so the "Notice" hearing could immediately go forward. Freightliner failed to do so. See letter dated June 27, 2002 and Debtors' revisions to Stipulation (which was never completed and filed).



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2. Debtors traveled to Portland, Oregon to take the "Notice" depositions on July 2, 2002. Debtors later determined the witnesses produced in Portland did not have firsthand knowledge on the "Notice" issues and had done little, if any, investigation before the depositions were taken. In fact, they identified another witness, Mr. Kevin Bangston, who Freightliner is finally providing on August 15, 2002, over one and one-half months later, and only after Debtors filed a formal 30(b)(6) notice on July 19, 2002. Freightliner has also delayed the taking of other scheduled depositions, causing further delay to a prompt resolution of this matter. Having not kept its part of the agreement, Freightliner should have no complaint.

3. Debtors filed a Preliminary Response to Memorandum of Points and Authorities Supporting Freightliner's Motion for (1) Reconsideration of April 22, 2002 Orders Authorizing Sale, Etc. and Approving Assumption and Assignment of Executory Vendor Contracts, Etc., and (2) Exclusion of the Freightliner Companies From the Effects of Those Orders ("Preliminary Response") and a Supplemental Motion to Assume and Assign (1) Agreement Between Dick Simon Trucking and Freightliner, (2) Agreement for Conditional Commitment to Repurchase #2000-00366, (3) Agreement for Conditional Commitment to Repurchase #2001-00013 and (4) Agreement for Conditional Commitment to Repurchase #2001-00014 Pursuant to 11 U.S.C. § 365 ("Supplemental Motion"). Debtors are trying to do what the Court has asked, that is, to get the matter resolved. Debtors will make whatever documents and witnesses Freightliner needs available on an expedited basis. As set forth in the Preliminary Response, a motion to assume and assign is a summary proceeding. Freightliner's arguments that it needs to do "interrogatories,"

"document requests" and "brief" issues before discovery can take place on the assumption and assignment issues sounds like a several months delaying tactic. Freightliner has already told the parties the subject agreements are not executory and cannot be assumed and assigned, as a part of its original Motion for Reconsideration. Debtors should be allowed to discover Freightliner's support for these statements.

4. Debtors are now asking the Court for a comprehensive hearing on the Motion for Reconsideration and the Supplemental Motion Debtors filed. Debtors have already secured August 29, 2002 as a date when the Court is available. This will not prejudice Freightliner, as it was told on at least June 4, 2002, June 27, 2002 and July 19, 2002 Debtors desire to have these hearings conducted and concluded in August. Since that time, Freightliner has done nothing except to delay the prompt resolution of the matter.

DATED this 5th day of August, 2002.

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CERTIFICATE OF SERVICE

I hereby certify that on August 5th, 2002, a true and correct copy of the above and foregoing was sent by U.S. Mail, postage prepaid, to all parties on the attached Service List and via facsimile and U.S. Mail, postage prepaid to the following:

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June 27, 2002

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Re: Draft Stipulation

Dear Tom:

These are my comments with respect to the draft stipulation:

1. The debtors agreed to a bifurcation of the hearings and that discovery on certain issues was necessary. My original timetable, however, was that discovery be completed in June and early July to the extent necessary, and to have both parts of the hearings, if necessary, completed by the end of July. While this now does not appear possible, the debtors need to have these proceedings at an end as soon as possible. I would ask that all parties agree that to the extent a second hearing is necessary, it be held no later than the end of August, and that the parties obtain a tentative date from the Court on that second hearing, should it be necessary.

2. I have a hearing in Salt Lake City on August 8, 2002, so will already be out there. If the first hearing could be held on the 8th or 9th, so I do not need to make another trip out there, it will help me and save the estate additional costs.

3. The debtors and the unsecured creditors' committee want to be certain we can participate in discovery agreed to between Central and Freightliner, but are not required to do so. Tom, when I spoke with you earlier, I told you the debtors really only sought a 30(b)(6) deposition of a representative of Freightliner who could testify on the notices issues and, to the extent necessary, assumption and assignment issues. I will forego a separate 30(b)(6) deposition at this time as long as I have your confirmation that the designated

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June 27, 2002

Page 2

representatives of Freightliner are sufficiently knowledgeable to testify about what documents or pleadings Freightliner received from whatever source, including, but not limited to, the debtors, and what oral discussions or knowledge Freightliner had concerning the bankruptcy cases, the sale of assets and the assumption and assignment of any contracts to which Freightliner was a party. To the extent such representatives whose depositions are being taken on July 2, 2002 do not have such knowledge, the debtors reserve the right to seek further discovery on these issues.

4. What time are the depositions on July 2, 2002 scheduled, and where will they be held? I need to know to make travel arrangements.

5. Finally, I want to be clear that the Stipulation between Central and Freightliner relates to the timing and general subject matter of the depositions and hearings only, and does not bind debtors or the committee on any other matters or issues, if any, referenced therein.

These are my comments to the stipulation. If you have any questions, please do not hesitate to contact me. I will mark up the stipulation in a manner consistent with these comments, and provide it to you today or tomorrow morning.

Very truly yours,


Scott J. Goldstein

SJG:kl

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Prepared by:

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IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF UTAH, CENTRAL DIVISION

In re:

SIMON TRANSPORTATION
SERVICES, INC.; DICK SIMON
TRUCKING, INC., AND SIMON
TERMINAL, LLC,

Debtors.

Case No. 02-22906
Case No. 02-22907
Case No. 02-24874
(Jointly Administered)

STIPULATION (DISCOVERY AND
HEARING DATES RE: NOTICE RE:
FREIGHTLINER'S MOTION FOR
RECONSIDERATION) AND ORDER

Judge Glen E. Clark

Freightliner LLC (f/k/a/ Freightliner Corporation) and Freightliner Market Development Corporation (together, "Freightliner"), and Central Refrigerated Service, Inc. ("Central"), by and through their undersigned counsel, hereby stipulate and agree as follows:

Recitals

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A. On May 2, 2002, Freightliner served and filed its Motion for (I) Reconsideration of April 22, 2002 Orders Authorizing Sale, etc. and Approving Assumption and Assignment of Executory Vendor Contracts, etc., and (II) Exclusion of the Freightliner Companies From the Effects of those Orders. A hearing on the Motion (the "Hearing") was set for June 4, 2002 at 10:00 am.

B. Prior to the Hearing, Central's counsel indicated a desire and a necessity to take deposition testimony on all issues raised by the Motion.

C. Also prior to the Hearing, counsel for Freightliner and counsel for Central, on behalf of their respective clients, agreed that certain discovery would be allowed and that the issues presented by the Motion would be bifurcated as follows: First, whether or not Freightliner received actual and/or adequate and timely notice of the relief that was ultimately awarded to Central in the Sale Order (capitalized terms which are not defined herein are used as defined in the Motion) and the Contracts Order, and, second, if not, whether the Freightliner Commitments can lawfully be assumed by the Debtors and assigned to Central.

Stipulation

NOW, THEREFORE, in order to avoid the expense, uncertainty and delay of protracted litigation over discovery issues, the parties hereto agree as follows:

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1. Central will take the depositions upon oral testimony of two Freightliner employees (Sally Fawver and Wells Talmadge) in Portland, Oregon, on July 2, 2002. Freightliner will provide the facilities (without charge to Central) and a court reporter (at Central's expense).

2. Central will take the depositions upon oral testimony of two employees of DaimlerChrysler Services North America LLC (Steven Goodale and Klaus Enteman) in Chicago, Illinois, on July 25, 2002. DCS will provide the facilities (without charge to Central) and Central will provide the court reporter (at its own expense).

3. These depositions will be limited in scope to the following inquiry: "What, if anything, did Freightliner know with respect to the specific relief being sought in this Court - as that relief related to Freightliner - and when did it know it?"

4. Central will serve and file its response to the Motion (but only with respect to the first issue referenced in the recitals above) on or before July 31, 2002.

5. Freightliner will serve and file its reply to Central's response on or before August 7, 2002.

6. A hearing will be held in this Court at ____:____ ()m. on August ____ 2002 on the first issue referenced in the recitals above. If this Court concludes that Freightliner did not receive actual and/or adequate and timely notice, then counsel to Freightliner will

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at that time request a hearing date on the second issue referenced in the recitals above. At this time, counsel agree that further discovery and/or briefing may be necessary before such hearing.

8. On or before July 15, 2002, Central will provide to counsel for Freightliner (i) all of Central's and the Debtors' drafts of the Sale Order prepared between March 10, 2002 and April 22, 2002, and (ii) all of Central's and the Debtors' drafts of the Contracts Order prepared between April 9, 2002 and April 22, 2002.

The foregoing Stipulation has been
AGREED TO AND SUBMITTED BY:

PARSONS BEHLE & LATIMER

J. Thomas Beckett
ANNE E. RICE
Attorneys for Freightliner

RICHARDS BRANDT MILLER & NELSON

MICHAEL N. EMORY
RUSSELL C. FERICKS
Attorneys for Central

The foregoing Stipulation is
SO ORDERED
As of this ___ day of July, 2002:

UNITED STATES BANKRUPTCY JUDGE

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